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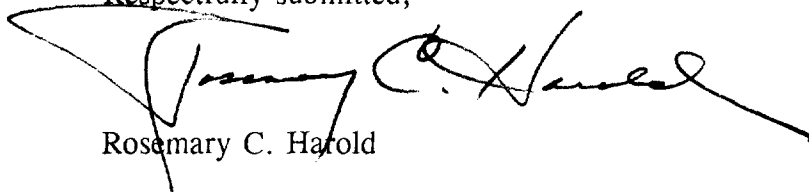
Re: Reply Comments of COMSAT Corporation
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-
Licensed Space Stations to Provide Domestic and International Satellite Service
in the United States, et al., IB Docket No. 96-111 / CC Docket No. 93-23,
RM-7931, File No. ISP-92-007

Dear Mr. Caton:

By its undersigned attorney, COMSAT Corporation ("COMSAT") hereby submits for filing its comments in the above-referenced rulemaking proceeding. This submission consists of the original document and four copies.

Please date-stamp the duplicate upon receipt and return it via the messenger for our records. Should any questions arise concerning this submission, kindly contact the undersigned.

Respectfully submitted,


Rosemary C. Harold

Attachment



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
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Amendment of the Commission's)	IB Docket No. 96-111
Regulatory Policies to Allow)	
Non-U.S.-Licensed Space Stations to)	
Provide Domestic and International)	
Satellite Service in the United States)	
)	
and)	
)	
Amendment of Section 25.131 of the)	CC Docket No. 93-23
Commission's Rules and Regulations to)	RM-7931
Eliminate the Licensing Requirement)	
for Certain International Receive-Only)	
Earth Stations)	
)	
and)	
)	
COMMUNICATIONS SATELLITE)	File No. ISP-92-007
CORPORATION)	
Request for Waiver of)	
Section 25.131(j)(1) of the)	
Commission's Rules As It Applies)	
to Services Provided via the)	
INTELSAT K Satellite)	
)	

COMMENTS OF COMSAT CORPORATION

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**Before the
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INTELSAT K Satellite)	

REPLY COMMENTS OF COMSAT CORPORATION

COMSAT Corporation ("COMSAT"), by its COMSAT International Communications division, hereby submits its reply to comments filed in the above-captioned proceedings.¹

¹ *In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite*
(continued...)

INTRODUCTION AND SUMMARY

In its Report and Order in the *DISCO-I* proceeding,² the Commission deferred consideration of COMSAT's entry into the U.S. domestic market utilizing the capacity it owns on the INTELSAT and Inmarsat systems.³ In the same order, the agency acted to allow international separate systems to offer U.S. domestic services and to permit the major U.S. domestic satellite operators to provide international services as well. In the *DISCO-I Order*, the Commission also removed, without any further comment or other proceedings, geographic restrictions previously placed on AMSC to allow its expansion internationally. Despite having solicited comment and built a record there pertaining to COMSAT's domestic offering of INTELSAT and Inmarsat capacity, the FCC stated that it would resolve the issues of COMSAT's domestic market entry in *DISCO-II*. As a result, COMSAT today remains the only U.S.-owned satellite company that is barred from offering its customers convenient "one-stop-shopping" for domestic and international satellite services.

¹(...continued)

Service in the United States, et al., IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007, FCC 96-210 (released May 14, 1996), *summary published* 61 Fed. Reg. 32,399 (June 24, 1996) ("*DISCO-II Notice*").

² *Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, 11 FCC Rcd. 2429 (1996) ("*DISCO-I Order*").

³ COMSAT has petitioned for reconsideration of that aspect of the *DISCO-I Order*. See *Petition for Partial Reconsideration and Immediate Interim Relief* (filed April 11, 1996).

The time is now long overdue for the Commission to bring an end to this discriminatory policy. The record contains no reasonable grounds for perpetuating the current restrictions, which not only harm COMSAT directly, but also injure the interests of American consumers (while failing to put any real pressure on the foreign administration whose policies *DISCO-II* is intended to influence). By now it should be obvious, beyond any doubt, that the incumbent special interests opposing COMSAT's use of INTELSAT and Inmarsat capacity to compete in the domestic market are merely seeking continued protection of their privileged market position. However, the proper focus of the Commission's policies is the protection of *competition*, not *competitors*.

Whatever validity there may have once been for a bar to COMSAT's domestic entry, it is now quite clear that a continuation of this policy results only in anticompetitive consequences. The policy objective underlying the restriction of COMSAT's entry was to encourage the growth of a competitive domestic satellite industry; this policy has now been achieved. Thus, the need for the restriction no longer exists. Indeed, it serves only to limit the range of choices available to U.S.-based users of satellite communications services.⁴

Such restriction of consumer choice is strikingly at odds with the prevailing pro-competition philosophy of communications regulation today. As exemplified by the Telecommunications Act of 1996, government action has evolved beyond maintenance

⁴ *Greater Boston Television Corp. v. Federal Communications Commission*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

of decades-old legal barriers that once confined communications companies in narrowly defined service markets. Policymakers are lifting outdated line-of-business restrictions in essentially all sectors of the industry -- so that cable operators are expanding into the traditional telephone services, telephone companies are entering the multichannel video marketplace, broadcasters are pursuing the prospect of data services, local and long-distance telcos are moving into each others' businesses, and so on. But one glaring anachronism remains: the restrictions that deny COMSAT, a small, almost wholly American-owned company, the same regulatory freedoms enjoyed by all of its competitors (many with substantial foreign ownership) in the U.S. market.

In the *DISCO-II Notice*, the Commission asked parties to comment on the possible use of various alternative "entry tests" to be applied in determining whether to permit non-U.S. licensed satellite systems to provide communications services that originate and/or terminate in the United States. The Commission invited comment not only on an "effect on competition in the United States" test, but also on variations of an "ECO-Sat" test, which would focus not on the benefits to U.S. customers, but on regulatory conditions in the "home markets" of the non-U.S. service providers.

Although the *DISCO-II Notice* did not expressly acknowledge the fact, any version of an ECO-Sat test, in the near term at least, would harm competition because it would restrict entry of new satellite service providers into U.S. communications markets. The *Notice* expresses a hope, however, that foreign administrations would

ultimately be induced to open their own markets, thereby increasing competition both internationally and in U.S. and foreign domestic markets.

COMSAT submits that the more thoughtful comments in the record demonstrate that an ECO-Sat test would (1) fail to achieve its objectives, especially as far as INTELSAT and Inmarsat services are concerned, and (2) prove to be counterproductive to important U.S. policy initiatives regarding competition and the restructuring of INTELSAT and Inmarsat. Restricting COMSAT is, at best, a totally ineffectual means by which to seek to influence the policies of foreign administrations. Accordingly, the Commission should adopt the "effect on competition" test, and not adopt any version of the ECO-Sat test.

The record confirms the wisdom of the Commission's tentative conclusion that applying an ECO-Sat test to COMSAT's *international* communications via the INTELSAT and Inmarsat systems would not serve the public interest. In any event, such a regulatory policy would likely contravene the United States' binding obligations to other nations participating in these international organizations.

With respect to COMSAT's provision of domestic services, the record persuasively shows that there is no reasonable basis for concluding that a continued ban on COMSAT's provision of U.S. domestic service via the INTELSAT and Inmarsat systems would put sufficient pressure on individual foreign administrations to induce them to open their communications markets to U.S. satellite service providers. Simply put, foreign administrations would have little incentive to do so. This is true because:

(1) the INTELSAT and Inmarsat satellite capacity available to serve CONUS is only a relatively small part of overall capacity and is not very large in absolute terms; and (2) the indirect financial benefit to any foreign administration from COMSAT's provision of domestic services is trivial. In these circumstances, a continued restriction on COMSAT's ability to serve the U.S. domestic market through the INTELSAT and Inmarsat systems would be most unlikely to produce the foreign policy results sought by the FCC. It would serve only to restrict the choices available to U.S. customers and limit domestic competition. Indeed, the *only* predictable result of such a test would be the continued indefinite bar to COMSAT's offering of INTELSAT and Inmarsat space segment services to the domestic U.S. marketplace, thus diminishing competition to the detriment of U.S. consumers.

The record convincingly demonstrates that the COMSAT's entry into the domestic market would advance competition by providing additional capacity to meet the needs of domestic consumers and facilitate the economies of "one-stop shopping," while posing no realistic, or even plausible, threat to competition. The only "threat" is that COMSAT's entry would serve to benefit consumers by increasing output and putting downward pressure on prices -- a result that, understandably, would create some unhappiness among the ranks of incumbent satellite service providers in the U.S. marketplace. But their self-serving, protectionist demands do not constitute a public interest showing.

In addition, COMSAT believes that the record demonstrates that:

- Consistent with the restructuring proposals of the United States Government for INTELSAT and Inmarsat, the Commission should confirm that any Title II and III authorizations held by COMSAT or its customers with respect to services provided via the existing INTELSAT and Inmarsat systems will apply fully and automatically to services using the same facilities of the proposed "privatized" spin-offs of these international organizations. Any other approach would jeopardize established service arrangements and severely impede prospects for adoption and implementation of the INTELSAT restructuring plan now endorsed by the U.S. Government and COMSAT, as well as longer term restructuring of Inmarsat.
- In the case of global non-geostationary mobile satellite services, the "effect on competition" test is far superior to a vague and cumbersome "critical mass" test, which (1) would reduce competition in the United States, and (2) could complicate the efforts of *U.S.-licensed* global MSS systems to provide worldwide service.
- The Commission should also offer the option of allowing the space segment provider to make an appropriate entry showing (but the Commission should certainly not require anything approaching a second "licensing" requirement for such satellites).
- The Commission should not, and need not, attempt to impose U.S. technical or financial requirements on non-U.S. satellite systems, which would be tantamount to "relicensing."
- The Commission need not adopt any licensing requirement for receive-only earth stations.

**I. THE RECORD SUPPORTS RETENTION OF THE
CURRENT REGULATORY TREATMENT OF
INTERNATIONAL SERVICES OFFERED BY
COMSAT VIA THE INTELSAT AND
INMARSAT SYSTEMS**

In marked contrast to the disagreements over many aspects of the *DISCO-II* proposals, commenters broadly concur with the Commission's decision to retain the current regulatory scheme for international transmissions provided via the INTELSAT and Inmarsat systems.⁵ Even those commenters who compete with COMSAT in the provision of transoceanic communications services recognize "that, in light of INTELSAT's original mission, the Commission should refrain from applying the ECO-Sat test to international communications" transmitted via the system.⁶ The same holds true for Inmarsat.⁷

Moreover, U.S. customers -- including not only interexchange carriers and their end users but also broadcast and cable networks that use INTELSAT and Inmarsat

⁵ Comments of PanAmSat, IB Docket No. 96-111, at 4-5 (filed July 15, 1996) ("PanAmSat Comments"); Comments of AT&T Corp., IB Docket No. 96-111, at 10-11 (filed July 15, 1996) ("AT&T Comments"); Comments of BT North American Inc., IB Docket No. 96-111, *et al.*, at 10-11 (filed July 15, 1996) ("BT North American Comments"); Comments of Kokusai Denshin Denwa Co., Ltd., IB Docket No. 96-111 *et al.*, at 3 (filed July 15, 1996) ("KDD Comments").

⁶ PanAmSat Comments at 5. In fact, U.S. obligations under international agreements require retaining the current regulatory treatment for international communications transmitted over INTELSAT and Inmarsat facilities. BT North American Comments at 3 and n.3.

⁷ AT&T Comments at 14 n.7 (urging FCC to "continue licensing U.S. carrier provision of *international* communications over the INTELSAT and Inmarsat systems without application of the ECO-Sat test").

satellite facilities extensively for communications such as "on-the-spot coverage of news events" in remote locations -- would be adversely affected if new Commission rules restricted or eliminated their access to COMSAT's international services.⁸ Such a result, as COMSAT noted in its initial comments, would be strikingly inconsistent with the Commission's goal of expanding the international communications service options available to the American public.⁹ The Commission should therefore adopt its tentative decision to maintain the current regulatory framework for all international services provided by COMSAT.

II. AUTHORIZING COMSAT TO PROVIDE DOMESTIC SERVICES USING INTELSAT AND INMARSAT FACILITIES WOULD BENEFIT U.S. CONSUMERS AND PROMOTE COMPETITION

Facts now before the Commission show that, of the three alternatives proposed in the *DISCO-II Notice* for reviewing COMSAT's offering of domestic services over the INTELSAT and Inmarsat systems, the "effect on competition" test is the most appropriate regulatory framework.¹⁰ Adoption (and sound implementation) of this test

⁸ Comments of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc., IB Docket No. 96-111, *et al.*, at 5-7, 13 (filed July 15, 1996) ("Joint Broadcasters/Turner Comments").

⁹ Comments of COMSAT Corporation, IB Docket No. 96-111 *et al.*, at 9 (filed July 15, 1996) ("COMSAT Comments").

¹⁰ COMSAT agrees with the general consensus supporting the Commission's decision to retain the current regulatory treatment for existing licenses and authorizations, and to applications pending prior to the adoption of the *DISCO-II*

will help provide U.S. consumers the benefits of increased choice among service providers, support U.S. international policy goals, and cause no harm to the functioning of the market. Furthermore, the record contains ample factual support and provided sufficient public notice for the Commission to apply that test to COMSAT now -- just as the Commission allowed domsats, separate systems, and AMSC into each others' markets without further proceedings -- and immediately authorize COMSAT's provision of domestic services via INTELSAT and Inmarsat.¹¹ After obtaining comments on this very matter following the *DISCO-I Notice*, the *DISCO-I*

¹⁰(...continued)

Notice. Contra, e.g., Comments of Motorola Satellite Communications, Inc. and Iridium, Inc., IB Docket No. 96-111, at 42-44 (filed July 15, 1996) ("Motorola Comments"). Moreover, the Commission need not readdress the well-worn arguments of Motorola concerning COMSAT's authority to provide LMSS and domestic AMSS via Inmarsat, which have been raised in other proceedings and have no bearing on the general policy issues raised in the *DISCO-II Notice*. See *Applications of Communications Satellite Corporation for Authority to Provide International Land Mobile-Satellite Services Outside of North America via the Inmarsat System*, 8 FCC Rcd. 638, 641 (1993); Consolidated Opposition of COMSAT Corporation to Petitions to Deny, File No. ITC-95-341, at 10-20 (filed July 11, 1995) (discussing Commission decisions concluding that agency has authority to authorize ancillary services under the Inmarsat Convention and Inmarsat Act). Also, Orion's citation to the *Foreign Carrier Entry Order* does not justify retroactive application of an ECO-Sat test to pending applications. Comments of Orion Network Systems, Inc., IB Docket No. 96-111, *et al.*, at 6 (filed July 15, 1996) ("Orion Comments"). That decision did not address satellites or the IGOs, and provides no basis for applying such a rule to past applications.

¹¹ COMSAT has already shown that the Commission has both the facts and legal authority to authorize COMSAT to provide U.S. domestic service using the INTELSAT and Inmarsat systems. See Petition for Partial Reconsideration and Immediate Interim Relief of Comsat Corporation, IB Docket No. 95-41 (filed Apr. 11, 1996); Reply of COMSAT Corporation, IB Docket No. 95-41 (filed June 5, 1996).

decision, and the *DISCO-II Notice*, there is simply nothing more that can be added on this issue, and the record is ripe for FCC action now.

A. The Proposed "Effect On Competition" Test Is The Most Appropriate Standard For COMSAT's Use Of Its INTELSAT and Inmarsat Capacity For Domestic Services

Commenters have provided the Commission with facts and policy considerations -- including support for the U.S. position in ongoing international negotiations -- that justify adoption of the effect on competition test as easily the most appropriate regulatory test for authorizing COMSAT to provide domestic services via the intergovernmental organization ("IGO") satellite systems.

1. The Effect On Competition Test Would Provide Direct Benefits To U.S. Consumers, While The ECO-Sat Alternatives Would Only Suppress Competition

There can be no question that the record supports adoption of the entry test that can bring the largest amount of spectrum capacity and broadest range of communications services to the U.S. market in the shortest possible time. Demand for scarce spectrum is evident in the many calls for exceptions to any general ECO-Sat regulatory framework that the Commission may adopt.¹²

¹² See, e.g., Comments of Newcomb Communications, Inc. and Mobile Datacom Corporation, IB Docket No. 96-111, *et al.*, at 4-7 (filed July 15, 1996) ("Newcomb/Mobile Datacom Comments"); Comments of General Instrument

The only proposal in the *DISCO-II Notice* that could readily lead to increased service options for U.S. customers is the "standard that focuses directly on the competitive consequences" of allowing COMSAT to offer domestic service using INTELSAT and Inmarsat facilities.¹³ Few, if any, service providers currently barred from offering U.S. domestic services are in a better position than COMSAT to make existing capacity quickly available to U.S. customers.¹⁴

The two other alternatives proposed for governing the use of IGO facilities derive from the general ECO-Sat approach to regulating entry of foreign-licensed systems into the U.S. market.¹⁵ These alternatives (or more draconian versions of

¹²(...continued)

Corporation IB Docket No. 96-111, *et al.*, at 3-4 (filed July 15, 1996) ("General Instrument Comments"); Comments of Western Tele-Communications, Inc., IB Docket No. 96-111 *et al.*, at 14 (filed July 15, 1996) ("WTCI Comments"). Joint Broadcaster/Turner Comments at 16-19. The Commission itself acknowledged the spectrum shortage in the *DISCO-I* proceeding. *DISCO-I Order* at 2432 ("we cannot ignore the continuing shortage of domestic C-band capacity to which many commenters have referred").

¹³ *DISCO-II Notice* at ¶ 68.

¹⁴ COMSAT Comments at 19.

¹⁵ See *DISCO-II Notice* at ¶¶ 66-67. Under the first proposal, referred to as the "all routes market test," the Commission would condition COMSAT's entry into the U.S. domestic market via INTELAT or Inmarsat on "the openness of all the various route markets served by the intergovernmental organization -- or at least all of the markets of the organization's members." *Id.* at ¶ 66. The second proposal, essentially a "most routes market test," would condition entry on "some minimum level of concurrence that is required for any official action of the organization." *Id.* at ¶ 67. As COMSAT pointed out in its initial comments, the first proposal would require that the domestic laws and policies of the nearly 140 member nations of INTELSAT and nearly 80 member nations of Inmarsat meet the agency's definition of reciprocity

(continued...)

them) have adherents among COMSAT's industry rivals precisely because these regulatory schemes would effectively shut COMSAT out of the domestic arena -- and thus limit the beneficial effects on prices and service options that accompany more vigorous competition.¹⁶

Adoption of an "effect on competition" entry scheme for COMSAT's provision of domestic service via INTELSAT and Inmarsat would not constitute favoritism, even if the Commission were to adopt a different test for other systems.¹⁷ INTELSAT and Inmarsat are not akin to other non-U.S.-licensed satellite systems in terms of legal structure, history, or U.S. role. Not only was the United States the leading proponent and organizer of the IGOs, but COMSAT is a U.S.-licensed service provider, is owned by U.S. shareholders, and is fully subject to FCC Title II regulation already. The policy favoritism that exists, if any, runs toward U.S. licensees that are subject to *no*

¹⁵(...continued)
before COMSAT could offer domestic services -- a standard that the Commission recognizes could "unduly" restrict service based on the practices of "what may be a small number of nations." COMSAT Comments at n.40 (quoting *DISCO-II Notice* at ¶ 66). The most routes markets approach is little different because it would still allow "a small number of nations" to effectively deny U.S. consumers additional choice in the domestic market.

¹⁶ See, e.g., PanAmSat Comments at 5-6; Comments of Orbital Communications Corporation, IB Docket No. 96-111, at 6-8 (filed July 15, 1996) ("ORBCOMM Comments").

¹⁷ See, e.g., PanAmSat Comments at 4-5; AT&T Comments at 17. COMSAT does not, in fact, oppose the adoption of the effect on competition test as the appropriate analytical framework for consideration of all applications involving services provided by or through any non-U.S. licensed satellite system. Indeed, COMSAT's opening comments explained why that is the most appropriate test for global MSS systems.

FCC Title II regulation, are substantially foreign-owned, and nonetheless have substantially more regulatory freedom to serve both the international and domestic satellite markets than does COMSAT.¹⁸

The interests of U.S. consumers undoubtedly would be best served by the Commission's adoption of the effect on competition test. Beyond the immediate domestic capacity gains facilitated by this test, the Commission has been presented with several additional justifications for adopting this approach to the use of INTELSAT and Inmarsat facilities for domestic services. As noted below, these considerations include both larger U.S. policy interests and facts demonstrating that the alternative ECO-Sat proposals will not -- certainly with respect to the IGOs -- advance the Commission's goal of opening foreign markets for U.S.-licensed service providers.

**2. Adoption Of The Effect On Competition Test
Will Be Consonant With Any Outcome Of The
Pending Negotiations Of The Group On Basic
Telecommunications**

All satellite services, fixed or mobile, have multipoint capabilities. Thus, the multilateral approach provided under the auspices of the World Trade Organization provides a preferable means of obtaining market access than the unilateral and counterproductive framework proposed in the *DISCO-II Notice*. COMSAT agrees with

¹⁸ See COMSAT Comments at 25-27. The U.S. interest obviously must allow for the continued competitive viability of its Signatory, COMSAT, as the IGO restructuring efforts proceed.

many commenters that the Commission should work with the U.S. Trade Representative ("USTR") and others to achieve a successful outcome in the talks conducted by the Group on Basic Telecommunications ("GBT"), scheduled to conclude in February.¹⁹ Accordingly, the FCC should take no action that could jeopardize the GBT talks.²⁰

For this reason, it is important to recognize the concerns raised by several commenters that the ECO-Sat proposals in this proceeding might send contradictory signals to other nations about U.S. views on the subject of open telecommunications markets.²¹ Indeed, some commenters fear that adoption of a restrictive ECO-Sat

¹⁹ See, e.g., Comments of Airtouch, IB Docket No. 96-111, at 9 (filed July 15, 1996) ("Airtouch Comments"); Comments of L/Q Licensee, Inc. and Loral Space & Communications LTD., IB Docket No. 96-111, at 11-12 (filed July 15, 1996) ("Loral Comments"); Consolidated Comments of DIRECTV, Inc., DIRECTV International, Inc., and Hughes Communications Galaxy, Inc., IB Docket No. 96-111 *et al.*, at 9 (filed July 15, 1996) ("DIRECTV Comments"); Comments of ICO Global Communications, IB Docket No. 96-111, *et al.*, at 16-18 (filed July 15, 1996) ("ICO Comments").

²⁰ Instead, the FCC should focus its limited resources on supporting USTR in the GBT effort rather than expend further energy on the ECO-Sat proposals, which are likely to be viewed by some countries as antithetical to the U.S. negotiating position. The Commission's expertise could be a valuable asset for USTR in ensuring the success of these negotiations for satellites.

²¹ See, e.g., Loral Comments at 10-11; DIRECTV Comments at 9; AirTouch Comments at 8; Comments of GE American Communications, Inc., IB Docket No. 96-111, *et al.*, at 5-8 (filed July 5, 1996) ("GE Americom Comments"); ICO Comments at 6-7.

approach might well violate the fundamental premises on which the trade talks are proceeding.²²

For example, the Embassy of Japan strongly counsels the Commission against adopting the ECO-Sat proposals: "[T]he very fact that the FCC has made such a proposal might be taken as a signal that the U.S. has no serious intention to negotiate the liberalization of satellite services through the WTO process, which would undoubtedly disappoint other countries."²³ Japan further warns that the ECO-Sat formula, "which takes a reciprocal approach in opening U.S. markets, is inconsistent with the current U.S. offer that includes liberalization of the satellite telecommunications field on an MFN basis."²⁴

Commenters also note that, should the GBT adopt the "open market access" position now being advocated by the United States, the FCC would soon be forced to expend its limited resources in revising any contradictory *DISCO-II* policy.²⁵ In

²² ICO Comments at 16-18 (ECO-Sat test could be construed to violate the "standstill" provision of the GBT talks by "dramatically increasing U.S. bargaining power" in those negotiations); Comments of the Embassy of Japan, IB Docket No. 96-111, *et al.* (filed Aug. 13, 1996) ("Japan Comments").

²³ Japan Comments at 1, 3 (because of *DISCO-II* proposal, "developing countries will be more hesitant about presenting offers for the liberalization of satellite services, and this will contradict the purpose of the FCC's proposal").

²⁴ Japan Comments at 2.

²⁵ *See, e.g.*, DIRECTV Comments at 9; Loral Comments at 9-11; ICO Comments at 10-21. Given the questions raised about the Commission's legal authority to adopt a reciprocity test, the Commission's adoption of the effect on competition test would carry the added benefit of obviating the need to respond to such challenges.

particular, of the tests proposed in the *Notice*, only the "effect on competition" test would accommodate any outcome of the GBT negotiations; any version of an ECO-Sat approach would probably turn out to be inconsistent with a successful GBT result.

COMSAT urges the Commission to act promptly in this proceeding -- prior to closure of the GBT talks -- by adopting the effect on competition test. This result will not interfere with the trade talks, nor will it contradict any international agreement that may eventually emerge from Geneva. To the contrary, the effect on competition test is the only regulatory mechanism proposed in the *DISCO-II Notice* that would comport with the United States' ultimate trade goals.

3. Application of ECO-Sat Reciprocity Tests To Intergovernmental Organizations Would Not Prompt Foreign Nations To Open Their Domestic Satellite Markets To U.S. Service Providers

As noted above, the ECO-Sat approaches to regulating COMSAT's use of IGO system capacity for domestic services would actually thwart the Commission's goal of increasing the competitive service options available to U.S. consumers. Thus, an ECO-Sat reciprocity regulatory scheme²⁶ could be justified only if the record shows that such rules will serve the Commission's other stated goal for this proceeding: opening foreign markets for U.S. service providers.²⁷

²⁶ GE Americom, for one, has no trouble characterizing the ECO-Sat test as a "reciprocity" test. GE Americom Comments at 3.

²⁷ COMSAT Comments at 9-10.

The record provides no evidence that any ECO-Sat derivation, at least when applied to IGOs, would do so.²⁸ COMSAT's opening comments demonstrated that the premise of the ECO-Sat approach does not hold true in the case of the IGO systems; there simply is not sufficient capacity available to serve the United States to provide foreign administrations with any incentive to alter their regulatory policies. Any indirect financial benefit that would accrue to a foreign administration by virtue of COMSAT's provision of U.S. domestic services via the IGOs simply is too inconsequential to entice a foreign nation with existing protectionist policies to expose its domestic service providers to vigorous competition from U.S. service providers.²⁹

Many other commenters agreed that an ECO-Sat test would probably fail to open foreign markets to U.S.-licensed satellite service providers.³⁰ These commenters, along with COMSAT, have pointed out that most foreign countries have no satellite systems that might desire access to the U.S. market -- and thus an ECO-Sat approach to entry of foreign systems into the U.S. market provides no incentive for

²⁸ As explained *supra* Section II.A.2, the GBT negotiations, rather than the FCC's ECO-Sat approach to regulation, provide the greatest incentives for foreign countries to open their markets to U.S. telecommunications service providers, including satellite systems.

²⁹ COMSAT Comments at 22-24.

³⁰ See, e.g., GE Americom Comments at 4; Comments of Space Communications Corporation, IB Docket No. 96-111, *et al.*, at 2-3 (filed July 26, 1996) ("Space Communications/Mitsubishi Comments"); PanAmSat Comments at 1.

these nations to amend their own domestic laws or policies.³¹ This is particularly true with respect to developing countries, whose underserved telecommunications markets are of great interest to satellite service providers.³²

Notably, even a number of U.S.-licensees -- the intended beneficiaries of the open market goal -- express concern that, rather than trigger greater deregulation of foreign markets, an ECO-Sat regulatory scheme might well prompt some foreign administrations to impose retaliatory restrictions on U.S. licensees already in, or seeking to enter, those nations' markets.³³ It bears repeating that most of the *DISCO-*

³¹ See, e.g., Loral Comments at 12-13, GE Americom Comments at 4, DIRECTV Comments at 9-10, PanAmSat Comments at 1-2. Even for those nations that do license satellite systems, the ECO-Sat approach may be unsuccessful because few desirable orbital slots are available to serve the United States. COMSAT Comments at n.38. Thus, unlike the presumption of virtually unlimited physical access underlying the Commission's original ECO approach to foreign *carrier* entry (which can occur on either a facilities or resale basis, and which need not involve any use of spectrum), U.S. companies would need to give up orbital slots and/or spectrum if foreign entities were to obtain access to the U.S. satellite market. COMSAT finds it interesting that the same commenters who support strict application of an ECO-Sat test also object to the Commission's proposal that U.S. and non-U.S. satellite applications be considered in joint processing rounds. See AT&T Comments at 10 ("AT&T recognizes that the Commission is trying to achieve equality between U.S.-licensed systems and non-U.S.-licensed systems seeking to serve the U.S. market. While this certainly is appropriate, the FCC should not be assigning orbital slots or spectrum to non-U.S. licensees.").

Consequently, COMSAT as a general matter agrees with Loral that "[p]ursuing global policies on band-sharing, frequency coordination, and equipment compatibility, [and interconnection]" would provide better "incentives for foreign administrations to grant true competitive access." Loral Comments at 6-7.

³² See Motorola Comments at 20-22; PanAmSat Comments at 1 (noting that many countries closed to U.S.-licensed satellites do not seek access to the U.S. satellite market).

³³ See Loral Comments at 12; DIRECTV Comments at 9-10.

II proposals fail to reflect the fact that the domestic markets of major foreign nations are *already* open to U.S. service providers.³⁴ For example, the Globalstar system already has secured landing rights -- including interconnection agreements -- with 92 nations.³⁵

Regardless of whether an ECO-Sat regulatory analysis might operate as predicted with privately owned satellite systems licensed by a single foreign nation, the record makes clear that the IGO ownership structure diminishes to the vanishing point any possible incentive that the ECO-Sat test may provide for opening the markets of IGO member countries.³⁶ The IGOs themselves are powerless to change the domestic laws or policies of their member nations; indeed, any suggestion that an IGO was pursuing such a course would create serious internal conflicts for the organization.³⁷ And COMSAT, of course, has absolutely no ability to control or influence the domestic

³⁴ See COMSAT Comments at n.39; ICO Comments at 33-34 and Appendix Exhibit B.

³⁵ AirTouch Comments at 5, n.6; Loral Comments at 13-14. See also *infra* note 83 (questioning U.S. licensee reluctance to disclose extent of their foreign entry).

³⁶ Orion's suggestion that the Commission consider "submarkets" would simply complicate the quagmire even further, and would serve no useful purpose. Orion Comments at 9.

³⁷ INTELSAT Comments at 9-10 (opposing adoption of an ECO-Sat regulatory scheme predicated upon "a finding that some portion of the IGO's members permit FCC-licensed satellites to provide analogous services in their markets" because such a test would "pit[] the interests of some members against those of others").

telecommunications policies of other national participants in INTELSAT or Inmarsat.³⁸

Neither the "all routes market test" nor the "most routes market test" will work to open foreign markets for U.S. service providers, and there is no benefit to be gained by applying such tests to the IGOs. Instead, the agency should establish the effect on competition analysis as its regulatory framework for evaluating COMSAT's provision of domestic service via INTELSAT or Inmarsat.³⁹ This test will direct the Commission's attention to its central responsibility -- the U.S. telecommunications marketplace -- and lead to the achievable and laudable result of augmenting competition in that market.

B. COMSAT's Provision Of Domestic Service Can Only Benefit U.S. Consumers And Should Be Authorized

The record now before the Commission supports not simply adoption of the effect on competition test but its immediate application to COMSAT as part of this proceeding -- actions to which the FCC has already committed itself.⁴⁰ Facts in the

³⁸ COMSAT Comments at 14.

³⁹ Nonetheless, should some form of the ECO-Sat test be adopted with respect to the use of IGOs for U.S. domestic services, COMSAT believes it would be consistent with the Commission's pro-competition goals to require opponents of any application to demonstrate the existence of both *de jure* and *de facto* barriers to the entry of U.S. systems into the relevant foreign markets. Cf. PanAmSat Comments at 4. The Commission should not require the applicant to prove a negative.

⁴⁰ DISCO-I Order at 2430.